

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILE

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ROBERT A. BISHOP
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

MISAEEL ROQUE-ESPINOZA,

Petitioner,

vs.

No. 04-2660-M1/P

T.C. OUTLAW,

Respondent.

ORDER GRANTING MOTION FOR RECONSIDERATION
ORDER VACATING DECEMBER 8, 2004, ORDER AND JUDGMENT
AND
ORDER TO RESPOND TO PETITION PURSUANT TO 28 U.S.C. § 2241

Petitioner Misael Roque-Espinoza, Bureau of Prisons inmate registration number 13229-424, an inmate at the Federal Correctional Institution in Memphis ("FCI-Memphis"), filed a pro se petition pursuant to 28 U.S.C. § 2241 on August 25, 2004, along with an application to proceed in forma pauperis. The Court issued an order on October 12, 2004, denying leave to proceed in forma pauperis and directing the Petitioner to pay the habeas filing fee within thirty days. Because it appeared that the habeas filing fee had not been paid, as a copy of the receipt was not placed in the case file and the payment was not noted on the docket sheet, the Court issued an order on December 8, 2004, dismissing the petition without prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute. Judgment was entered on December 8, 2004. On December 20, 2004, Petitioner filed a motion for reconsideration, which the Court construes as a timely motion pursuant to Fed. R. Civ. P. 59(e), in which he provided a

receipt demonstrating that the habeas filing fee was paid by check on October 27, 2004, within the time specified in the October 12, 2004, order. On March 24, 2005, the Clerk docketed a letter from the Petitioner inquiring about the status of his motion for reconsideration. For good cause shown, the motion for reconsideration is GRANTED. The December 8, 2004, order and judgment are VACATED.

It is ORDERED that the Respondent, FCI-Memphis warden T.C. Outlaw, shall file a response to the petition within twenty-three (23) days.

It is further ORDERED that the Clerk shall serve a copy of the petition and this order on the Respondent by certified mail and shall provide a copy of the petition and this order to the United States Attorney for the Western District of Tennessee.

IT IS SO ORDERED this 22 day of April, 2005.



JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 8 in case 2:04-CV-02660 was distributed by fax, mail, or direct printing on April 25, 2005 to the parties listed.

Misael Roque-Espinoza
FCI-MEMPHIS
P.O. Box 34550
Memphis, TN 38184

Honorable Jon McCalla
US DISTRICT COURT